IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

WP(C).No. 33717 of 2003(L)

PETITIONER:

K.A. AZEEZ, MANAGING PARTNER,
THOUSAFIC GRANITE INDUSTRIES, NELLIKKATTA
NEKRAJE P.O., KASARAGOD.

BY ADV. SRI.IMTHIYAZ MOHAMMED M.S.
SRI.SHIRAZ ABDULLA M.S.

RESPONDENTS:

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1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDHYUTHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM

2. THE DEPUTY CHIEF ENGINEER, ANTI POWER
THEFT SQUAD (APTS) VYDHYUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM

3. THE DEPUTY CHIEF ENGINEER,
ELECTRICAL DIVISION OFFICE, KASARAGOD.

4. THE ASSISTANT ENGINEER,
ELECTRICAL SECTION CHERKALA, CHENGALA,
KASARAGOD DISTRICT

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C)NO.33717/2003

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. TRUE COPY OF REPRESENTATION SUBMITTED BY PETITIONER TO THE RESPONDENT DATED 4-12-2002

EXT.P2. TRUE COPY OF PENAL BILL ISSUED BY 4TH RESPONDENT DATED 5-3-2003

EXT.P3. TRUE COPY OF APPEAL PETITION FILED BY THE PETITIONER BEFORE 2ND RESPONDENT.

EXT.P4. TRUE COPY OF DEMAND NOTICE ISSUED BY 2ND RESPONDENT THROUGH THE 4TH RESPONDENT.

EXT.P5. TRUE COPY OF JUDGMENT IN O.P.12383/2003 OF THE HIGH COURT OF KERALA

EXT.P6. TRUE COPY OF ORDER DATED 17-9-2003 ISSUED BY THE 2ND RESPONDENTS

EXT.P7. TRUE COPY OF REVISED BILL ISSUED BY 4TH RESPONDENT

EXT.P8. TRUE COPY OF REVISION PETITION FILED BY PETITIONER BEFORE 1ST RESPONDENT DATED 14-10-2003

EXT.P9. TRUE COPY OF STAY PETITION FILED BY THE PETITIONER.

/ TRUE COPY /

KURIAN JOSEPH, J.

W.P(C)No.33717 of 2003

Dated this the 17th day of January, 2007

JUDGMENT

The writ petition is filed with the following prayers:-

> (i) issue a writ in the nature of certiorari or other appropriate writ or order quashing Exts.P6 and P7.
>
> (ii) issue a writ of mandamus or any other appropriate writ, direction or order commanding the respondents to consider and pass orders on Exts.P8 and P9.

The main item of penalty is on unauthorised load. The sanctioned load is only 37 KW whereas the load connected at the premises is 59 KW. It is now settled law in view of the Bench decision of this court in W.A.No,1231/2003 that penalty in a situation of unauthorised load is to be limited to the fixed charges. There shall be no proportionate energy charges. As far as the penalty on the ground of faulty state of capacitors is concerned only if the fact of fault had been notified to the consumer and yet the consumer refusing to rectify the mistake the penalty is permissible. A consumer cannot know whether a capacitor of an electrical device is faulty or not. There is no case for the

respondents that the petitioner was informed about the faulty nature of the capacitor and that steps were not taken to repair the same. Therefore, there shall be no penalty in that regard also. The penalty as far as the unrecorded portion of energy as well as the unauthorised extension for 4 KW load will stand. The impugned orders to the extent required in the judgment as above are quashed. There will be a direction to the 4th respondent to issue a fresh demand to the petitioner within a period of four months from the date of receipt of a copy of this judgment. There shall be no coercive steps against the petitioner in respect of the impugned demands till such time.

The writ petition is disposed of as above.

(KURIAN JOSEPH, JUDGE)

ahg.